

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on April 7, 2003 at
10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)
Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SJ 31, SB 490, 4/3/2003
Executive Action: SJ 31, SB 490

HEARING ON SJ 31

Sponsor: SEN. BILL TASH, SD 17, DILLON

Proponents: Diana Koch, Chief Legal Counsel for the Department
of Corrections
Steve Gibson, Department of Corrections
Bonnie Addy, Mental Health Ombudsman for Montana

Opponents: None

Opening Statement by Sponsor:

SEN. BILL TASH, SD 17, DILLON, introduced SJ 31. He had presented a bill earlier, SB 388, which revised the Youth Court Act. There was a lot of opposition to the bill. The purpose of SJ 31 was to address constituent concerns dealing with the juvenile justice system. He has served on the Corrections Advisory Committee where several examples of inconsistency having to do with the Department of Corrections (DOC) were brought to their attention. The Juvenile Probation System is fragmented and operates differently in each of the 22 judicial districts in the state. As a result of the district court assumptions, the district court judges have the authority to determine salaries. Some juvenile probation officers have a higher salary than the state pay plan. This is one of the areas that would be studied. The study committee will also review which state agency would be the best place for oversight. On page 2, line 16, the bill states that this study be reviewed by an appropriate committee designated by the Legislative Council. He would like to see this study go to a specific committee, such as Law and Justice Interim Committee.

Proponents' Testimony:

Diana Koch, Chief Legal Counsel for the Department of Corrections, stated the juvenile justice system is fragmented due to the 22 different components as well as the fact that part of the oversight for the system under the Supreme Court and part under the DOC. The Supreme Court addresses all the juvenile matters under the Youth Courts while the DOC has responsibility for the juvenile facilities, parole, and funding for out-of-home placement and transitional living. The Youth Court judge hires and fires the Youth Court staff. The Supreme Court administrates the 22 different systems. The policies and procedures are not consistent. The DOC has control of the facilities and the juvenile parole. If a youth is found guilty of a criminal offense, the Youth Court handles the proceedings until the youth is committed to Pine Hills. A youth probation officer makes

recommendations and the youth is then handed off to the DOC. There is no follow through from youth probation to the DOC. When a youth is paroled, the DOC employees have the parole. The youth usually goes back to the community but the youth probation system has lost all control and interest in the youth. She testified as an informational witness for SB 388 because she believed the two systems should be brought together under one administrative body. One way to accomplish this would be to place it under the DOC. There would be some liability questions with the Supreme Court as administrator. When a person on adult probation commits an offense, the first thing the victims do is sue the DOC because there was an adult probation officer that was responsible to oversee their behavior. If the person is a youth and the Youth Court is overseeing the youth probationer, the victim could sue the Youth Court and then the Supreme Court administrator. There are several Youth Court judges who become very involved in the proceedings of the youth even before they are brought into the Youth Court. This may negate some of the youth's due process rights.

Steve Gibson, Department of Corrections, maintained the debate has gone on for many years in regard to where the juvenile system fits. The study resolution is an objective way to bring all parties together to make recommendations. A Department of Youth Services could entail corrections, probation, and family services functions. He serves on the National Executive Board for all Juvenile Administrators. Currently approximately 20 states have a combined system. The state has an obligation to the taxpayers to show what works and what doesn't work.

Bonnie Addy, Mental Health Ombudsman for Montana, agreed the current system is fragmented. Her interest is that there is a large overlap between the youth involved with the juvenile justice system and the youth who carry a diagnosis of serious emotional disturbance (SED). A study that may determine a more comprehensive and cohesive system would be valuable. Most of these youth are not children whose parental rights have been terminated. They often are youth in the custody of the state because of their involvement in juvenile probation. The role of the parents is not clear. This is another piece of the puzzle. The parents do have a role and a responsibility in the development and the outcome of these youth.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY questioned whether most of the problems with the system have occurred with the matter of state assumption.

Ms. Koch maintained the only thing that has arisen in the past two years have been the questions of liability and oversight with Supreme Court assumption. There are questions relating to the Supreme Court assuming liability and whether it can sit on cases that involve youth.

SEN. CROMLEY questioned whether the same problems were evident with adult justice in regard to presentencing and then the delivery to the DOC. **Ms. Koch** pointed out in the adult system the adult criminal offender deals with the district court judge. Anyone who deals with the district court judge does so in an adversarial position. The district court judge does not hire, fire, and pay the paycheck of the county attorney. The adults do not get into the corrections system until they have been convicted of a criminal offense. In regard to the juvenile system, the district court judge is sitting as a youth court judge and can deal with the youth before they are ever adjudicated. The Supreme Court deals with the Youth Court and the people that they have hired and fired. This is what is creating the liability.

SEN. CROMLEY questioned whether both the pre-sentencing and the post-sentencing areas should be studied. He noted the language in the bill only addressed the juvenile justice system regarding juvenile probation. **SEN. TASH** agreed both areas could be studied and added the focus was more on the juvenile justice system.

SEN. CROMLEY believed this should address the juvenile justice system but not specifically relate to the probation area. **SEN. TASH** did not see any problem with that idea.

SEN. AUBYN CURTISS asked **Mr. Gibson** whether any recidivism statistics were available to show whether or not one type of administration would be superior to another. **Mr. Gibson** noted all states report their recidivism statistics differently. The information would be available for all states.

CHAIRMAN DUANE GRIMES noted the language in the bill stated the study was to be assigned to staff. He assumed this meant the DOC would be handling the study. **Ms. Koch** explained the language in the bill meant the study was to be turned over to legislative staff. It was never the intent to turn the study over to the DOC due to the controversial nature of the issues.

Closing by Sponsor:

SEN. TASH remarked that parental rights and notification have not been carefully followed in many cases.

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SJ 31

Motion: **SEN. CROMLEY** moved that **SJ 31 DO PASS.**

Substitute Motion: **SEN. CROMLEY** moved that **SJ 31 BE AMENDED.**

Discussion:

SEN. CROMLEY explained his amendment. He would strike the last two words on the first page and the first word on page 2 and the same three words should be stricken from the title.

SEN. MIKE WHEAT noted (3) on page 2 talked about an examination specifically of juvenile probation programs. The title should not be amended.

CHAIRMAN GRIMES questioned whether the study should review the entire system or just the probation portion of the system.

SEN. JERRY O'NEIL claimed it would be important to include sentencing. If the judge is involved with the juvenile before the juvenile is sentenced, this could be problematic.

Ms. Lane explained the study resolution was being brought in place of SB 388. She worked on the bill during the interim. All of the concerns addressed in SB 388 were with juvenile probation. Most of the problems were with what a juvenile probation officer (JPO) could do particularly in terms of parental rights and the rights of the parents over the placement. This would take place long before parole. Juvenile parole officers actually work for the DOC and the state. The issue concerns JPOs who are hired by the court, work under the jurisdiction of the court, and believe they enjoy certain judicial immunity by having been hired by the court. The problem in Dillon involved a young teenage boy whose parents were not very sophisticated in regard to the system. The parents signed certain consents and their son was taken away from them for several years. The parents had no say in where he was sent and, consequently, he was sent out of state. The parents also had no say in the drugs he was put on. The original intent of the bill was to look at the situation in regard to parental rights versus the rights of JPOs. No one oversees or supervises the JPOs so they had no where to go to complain about what the

JPO was doing to their son. She believed the intent of the study resolution was not to study the entire system. She further added that would be an incredible study to be completed over an interim.

SEN. CROMLEY asked whether probation would be pre-incarceration.

Ms. Lane affirmed it would be. When a youth goes into the juvenile justice system, they can be handled by the JPO and never go before a judge. This is an informal proceeding. The next step is a formal proceeding, and consent adjustments can be signed which would determine placement, treatment, etc. The most formal proceeding would be a consent decree, which needs the judge's signature. All the procedures involve the justice court which involves the judge and the JPO hired by the judge.

SEN. CROMLEY asked when the assignment to the DOC would occur.

Ms. Lane maintained the youth would be assigned to the DOC after an adjudicatory hearing and only the most serious juvenile offenders could be sent to the DOC for placement in a juvenile correctional facility such as Pine Hills. The district court and the JPO would then be out of the picture. There would then be a more formal situation involving the DOC and parole officers. The problem is there is no where to go to complain if it is believed that a JPO is acting out of hand and stepping beyond what he or she ought to be doing.

CHAIRMAN GRIMES asked whether the case in point involved any court action. **Ms. Lane** believed most of the happenings were in consent decree form. She added that **Ms. Addy** had prepared a report.

SEN. O'NEIL questioned whether the wording of the resolution was broad enough to include the juvenile's interaction with the JPO prior to seeing the judge. **Ms. Lane** maintained this was the main concern. She will review the study resolution thoroughly to make sure it accomplishes that goal.

SEN. GARY PERRY questioned the crime involved in this case. **Ms. Addy** explained the child was eventually adjudicated for stealing his parent's car. There had been some minor offenses prior to that which had not led to adjudication.

SEN. DAN MCGEE reminded the Committee in the 1995 interim there was a huge study on the juvenile justice system. The 1995 Legislative Session spent most of its time dealing with the issue.

SEN. CROMLEY withdrew his motion to amend.

SEN. WHEAT asked for further clarification of the intent of the language relating to the staff involved in the study. **Ms. Lane** explained the language is included in all study resolutions due to the fact that study resolutions need to be prioritized. Sometimes there may be not be enough funding to study every resolution and this could then be assigned to a staff person.

Vote: Motion carried with **GRIMES** voting no.

HEARING ON SB 490

Sponsor: **SEN. DAN MCGEE, SD 11, LAUREL**

Proponents: **Harold Blattie, Assistant Director of MACo**
Mary Phippen, Montana Association of the Clerks of
District Court
Beth McLaughlin, Montana Supreme Court
Administrator's Office
Linda Stoll, Missoula County

Opponents: **None**

Opening Statement by Sponsor:

SEN. DAN MCGEE, SD 11, LAUREL, introduced SB 490. He explained this was a Senate Judiciary Committee bill which replaced SB 134. The bill was worked on extensively by four members of the Senate Judiciary Committee, four members of the Senate Finance and Claims Committee, as well as public members to include the Montana Association of Counties (MACo), the Supreme Court, the Clerks of District Court, and others.

Proponents' Testimony:

Harold Blattie, Assistant Director of MACo, remarked that the bill is reflective of everyone's interests. He added that **Beth McLaughlin, Montana Supreme Court,** has prepared amendments and he agrees with the amendments which provide additional clarification. The bill strives to separate costs into three areas: 1) costs the state will pay for; 2) costs the counties will pay for and then be reimbursed by the state; and 3) costs that will be paid and retained by the counties. New Section 8 includes the coordination language with SB 218. The two bills are very closely related. Their only concern was on page 9, line 27. They do not understand part of the inserted language. They would like a little more clarification in that regard.

{Tape: 2; Side: A}

Mary Phippen, Montana Association of the Clerks of District Court, noted they did have some concerns in regard to New Section 4, page 9. If SB 218 and SB 490 both pass, that concern has been taken care of with proposed amendment no. 8.

Beth McLaughlin, Montana Supreme Court Administrator's Office, presented proposed amendments, HB049001.avl, **EXHIBIT(jus74a01)**. She maintained none of the amendments were substantive in nature. Most of the amendments were in SB 18. Instruction No. 2 addresses involuntary commitment cases and compensation for appointed counsel. Currently the costs for appointed counsel for an involuntary commitment are paid for by the district court program. There is contrary language in the involuntary commitment statutes. The suggestion is that it is made clear that the court is responsible for this cost and the costs are currently paid for by the court.

Instruction No. 4 deals with the costs of training for persons listed in (1)(a)(v). Those persons are all court employees. It is not necessary to outline in statute that they are responsible for training costs for their employees.

Instruction No. 5 would place all youth court expenses into one section of 3-5-901 rather than have them spread out in different sections. There are a number of costs of the youth court that are paid for by the court but are not referenced in 3-5-901.

Instruction No. 6 amends 41-5-111. They would strike the costs of medical and other examinations and treatment of a youth ordered by the court. Currently medical and other examinations and treatment are not paid for the court. They are paid for by juvenile placement dollars managed by the Department of Corrections and assigned to the juvenile youth court districts or they are paid for by Medicaid or private insurance. The court does not assume these costs.

Instruction No. 7 cleans up a section of the involuntary commitment act. This would amend 53-21-116 to make it clear that the county is not the party responsible for appointed counsel for someone involved in an involuntary commitment process. The current language makes it appear as though the county is responsible but all that money and responsibility transferred over to district court funding. The amendment also deals with involuntary commitments. Currently the county pays for a professional person and that is the person assigned to handle the psychiatric evaluation of the person faced with a commitment. This is a county responsibility. This is not being changed, it will remain a county responsibility. They are trying to protect the matter that a professional person cannot charge a fee for

performing the evaluation and then charge the court a separate fee for testifying in court. The counties pay them a lump sum at the current time. This lump sum should include the cost of the evaluation and the cost of providing testimony in court.

Instruction No. 10 contains the language that coordinates with SB 218, if it passes. The missing part of indigent defense in (a) (b) and (c) are indigent defense costs for juveniles involved in the youth court system. The language makes it clear counsel is appointed to represent them in a youth court proceeding.

Linda Stoll, Missoula County, rose in support of SB 490.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

CHAIRMAN GRIMES questioned whether the repealer section in SB 18 had been addressed. **Ms. McLaughlin** noted this was addressed in Instruction No. 6.

CHAIRMAN GRIMES asked for further clarification in regard to the entities being taken out of the personnel plan. **Ms. McLaughlin** explained the entities or employees were being stricken because they did not work for the state judicial branch and would not be included in the state judicial branch personnel plan. County attorneys, deputy county attorneys, public defenders, and clerks of district court all work for counties. There is no reason to have them in this section of statute.

SEN. PERRY asked for further clarification of Section 2 in relation to court reporters costs. He especially noted the inconsistency between the words "must" and "may". **Ms. Stoll** explained the language was added when **Chief Justice Gray** pointed out some costs of the transcript were not appropriate judicial costs. Everyone agreed the transcripts requested by the county attorney were prosecutorial expenses and should not remain. If the local county attorney is prosecuting the case, the county would pay the transcript fee. In some cases, the state would send out an assistant attorney general to prosecute a case. If they ask for a transcript, it would be paid as part of their prosecution expenses. This is not a legitimate district court expense, but a prosecutorial expense. **Ms. Lane** added on line 13 and 16 the words "may be paid" is connected with the word "only". It is a limitation in that they can only pay the actual costs of preparation as opposed to anything else. It is still a "must" and is a limitation on what is paid.

SEN. CROMLEY noted page 5 contained certain costs that were excluded. He believed the costs of providing space for the courts would be a court costs. **SEN. MCGEE** explained this would address costs for county employees. County attorneys offices are not a part of the district court for purposes of state assumption.

SEN. PERRY asked for further clarification of the accumulated sick and vacation leave transfer. **SEN. WHEAT** explained it is important the state and the county know the costs involved. There was a negotiated agreement between the state and the counties as to how much the counties would pay and how much the state would ultimately assume. The state will assume the employees with all their accumulated sick leave, vacation, and retirement. All the employees come over with a certain amount of funding from the county to cover the county's share. **Mr. Blattie** explained to prevent a financial hardship for the counties in one year, the counties have been allowed to spread this over two years and pay half of the 25 percent on January 2004, which is after the November taxes have come in, and the other half is paid after the November taxes of the following year have been received.

SEN. JOHN ESP claimed SB 490 clarifies many items and puts a system in place for tracking expenses. It allows some flexibility for both the state and the counties. It clearly identifies and addresses certain misconceptions in the original SB 176 language.

Closing by Sponsor:

SEN. MCGEE remarked SB 490 is a very important piece of the puzzle in regard to the state assumption of district courts. The four bills involved include: SB 490, SB 218, HB 489, and SB 18. The overriding philosophy was to remove the county to the maximum extent possible. If there is to be state assumption of these matters, the counties should be as far out of the picture as possible. When a juror needs to be paid expenses immediately, the counties will pay those expenses and be reimbursed by the state.

EXECUTIVE ACTION ON SB 490

Motion: **SEN. MCGEE** moved that **SB 490 DO PASS.**

Substitute Motion/Vote: **SEN. WHEAT** moved that **SB 490 BE AMENDED.**
The motion carried unanimously.

Motion/Vote: SEN. WHEAT moved that SB 490 DO PASS AS AMENDED.
The motion carried unanimously.

{Tape: 2; Side: B}

DISCUSSION ON INTERIM STUDY OF MEDICAL MALPRACTICE

CHAIRMAN GRIMES requested that an interim study resolution be prepared by the Committee to address medical malpractice. This would go to the Law and Justice Interim Committee. His understanding is that there is a great deal of internal tension in law firms around the state that deal with this issue. This would take a three-fourths vote of the Committee. The interim committees are balanced, there is no partisan persuasion involved.

SEN. CROMLEY spoke in support of the venture. He believed there was a disconnect between the types of testimony heard. Physicians state they have been told their increasing insurance premiums are due to certain types of expert witnesses.

SEN. WHEAT agreed and noted there was a lot of misinformation on both sides of the issue. It may be very helpful for everyone but it is a huge undertaking because the insurance agency is virtually unregulated. The study will need to review how premiums are invested and how the premiums are set. This will go way beyond the issues identified for tort reform.

SEN. PERRY claimed the insurance industry is extremely regulated. He had mixed feelings about whether the study would be helpful.

CHAIRMAN GRIMES explained on the first meeting of the Committee, they would review the ranked items presented to the Committee by staff. A vote would be taken as to the work schedule. An exhaustive study would be very productive.

Motion: **CHAIRMAN GRIMES** moved that the Committee adopt an interim study resolution regarding medical malpractice reform.

Discussion:

CHAIRMAN GRIMES further explained this would involve medical malpractice cost issues.

SEN. O'NEIL questioned whether the study would include the relationship between restrictions on expert witnesses and the amount the court awards plaintiffs or whether the study would determine the medical malpractice expert witness restrictions versus insurance costs. Would the study address the relationship

between insurance costs or the relationship between court awards?

SEN. WHEAT believed it would be necessary to look at the relationship between the cost of medical malpractice insurance and potential related reforms. Some reforms are in place but medical malpractice insurance continues to increase. It is going up faster in some areas than it is in others. This is the relationship that needs to be studied. Is there any way to provide legal reforms to assist in keep medical malpractice costs down?

SEN. CROMLEY noted the concern expressed by the physicians and the medical association was the escalating insurance costs. The study needs to be broad enough so that the costs in this state can be compared to the costs in other states. It should include alternatives and actions taken by other states.

SEN. CURTISS noted the major factor would be whether it is inhibiting the delivery of physician services due to high insurance rates.

Vote: The motion carried with PERRY voting no.

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. DUANE GRIMES, Chairman

JUDY KEINTZ, Secretary

DG/JK

EXHIBIT (jus74aad)